

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PERNELL M. FRANKE,

Petitioner,

vs.

ROB JEFFREYS, Director of the Nebraska
Department of Correctional Services,
Nebraska State Penitentiary;

Respondent.

8:24CV63

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner Pernell M. Franke's Motion for Leave to Proceed in Forma Pauperis ("IFP"), [Filing No. 2](#), and Motion to Amend his Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#), [Filing No. 3](#).

Petitioner filed a habeas petition on February 20, 2024. [Filing No. 1](#). Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). As indicated in the Court's records, Petitioner paid the \$5.00 fee on February 20, 2024, when he filed his petition. Accordingly, the Court will deny Petitioner's IFP motion as moot.

Petitioner also has filed a motion seeking leave to amend his [28 U.S.C. § 2254](#) habeas petition, which the Court construes as a motion filed pursuant to [Rule 15\(a\)\(2\) of the Federal Rules of Civil Procedure](#). [Filing No. 3](#). Upon consideration, the Court will grant Petitioner's motion and he shall have 30 days from the date of this order to file an amended habeas petition as set forth below.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed IFP, [Filing No. 2](#), is denied as moot.
2. Petitioner's Motion to Amend, [Filing No. 3](#), is granted. Petitioner shall have until **May 3, 2024**, to file and serve an amended habeas petition that clearly presents all of his claims for relief. To be clear, Petitioner must set forth his claims from his original petition, [Filing No. 1](#), and any additional claims in his amended petition. **Petitioner is warned that the amended petition will supersede, not supplement, his original Petition.** Petitioner is encouraged to utilize the enclosed form petition for a writ of habeas corpus under [28 U.S.C. § 2254](#). Failure to file an amended petition within the time set by the Court may result in dismissal of this matter without further notice to Petitioner.
3. The Clerk of Court is directed to send to Petitioner the Form AO 241 ("Petition for Relief From a Conviction or Sentence By a Person in State Custody").
4. The Clerk of Court is directed to set a pro se case management deadline using the following text: **May 3, 2024**: deadline to file amended petition.

Dated this 3rd day of April, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", written over a horizontal line.

Joseph F. Bataillon
Senior United States District Judge